

After Final Amended



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re. Patent Application of Dertzbaugh

USSN 09/917,791

Filed: July 31, 2001

Title: PROTECTIVE PEPTIDES NEUROTOXIN OF *C. BOTULINUM*

AMENDMENT AND RESPONSE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a Response to the Office Action mailed November 7, 2003. Attached hereto is a Request for Extension of Time and a Notice of Intent to Appeal.

Attached hereto are the amended claims:

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RESPONSE TO REJECTIONS

Applicant has amended the claims to recite the Seq. ID numbers and to identify the maximum size of the polypeptide. Support for the limitation to polypeptides of 15-30 kDa in size is seen at page 3, line 9 of the Summary of the Invention, wherein there is also discussion of the value of a subset of the sequence of the neurotoxin.

Claims 2-8 (all of the claims active in the application) have been rejected under 35 U.S.C. 112 second paragraph as being indefinite. However, the amendments presented herein are believed to render the rejection moot.

Claims 8 and 2 have been rejected under 35 U.S.C. 102(b) as anticipated by Binz, which teaches the entire sequence of the botulinum. The amendment to the claim indicates the maximum size of the polypeptides containing the desired sequences. In view of the amendment, the claim as presented does not claim the entire sequence of the natural neurotoxin, but a truncated sequence that is of particular, unexpected benefit, in view of findings seen at page 15 of the specification. The selected polypeptide is not taught or obvious over the teachings of Binz.

Claims 8 and 2 have been rejected under 35 U.S.C. 102(b) as anticipated by Thompson, et al. The rejection is respectfully traversed as to the instantly claimed invention, the sequences of the restricted size as claimed. Thompson gives no indication that a smaller polypeptide containing the required sequence would provide the benefit taught in the instant specification for raising an immune response to the target toxin.

Claims 3-7 have been rejected under 35 U.S.C. 103(a) as unpatentable over Binz in view of Lang and further in view of Lockman. The rejection is respectfully traversed. The claims clearly limit the location of the sequences that are required and also limit the size of the sequence in such a manner that there is no doubt that, in view of the size of the sequence, the claim does not claim the entire sequence of the organism.

It is believed the claims are in condition for allowance. Allowance of the claims is respectfully requested.

Respectfully submitted,

Jenna Hendricks, Reg. No. 32,535